

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE, WESTERN DIVISION
AT WINCHESTER

DEBBIE JERNIGAN,

*

Plaintiff,

*

v.

* Case No. 4:18-cv-6

**WHEELER REAL ESTATE INVESTMENT
TRUST, INC. and WHLR – Forrest Gallery, LLC**

*

Defendants.

*

NOTICE OF REMOVAL

Without submitting to the jurisdiction of this Court and without waiving any available defenses, including, without limitation, lack of jurisdiction, improper venue, statute of limitations, insufficient process, or insufficient service of process, Defendants Wheeler Real Estate Investment Trust, Inc. (“Wheeler”) and WHLR – Forrest Gallery, LLC (“Forrest Gallery”), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 hereby file this Notice of Removal of the above-described action to the United States District Court for the Eastern District of Tennessee, Western Division at Winchester from the Circuit Court for Coffee County, Tennessee where the action is now pending and states as follows:

1. This cause of action was commenced in the Circuit Court for Coffee County, Tennessee on January 22, 2018 and process was served on the Defendants on January 26, 2018. A copy of Plaintiff’s Complaint setting forth the claim for relief upon which the action is based was first received by the Defendants on January 26, 2018. Thus, removal is timely filed.

2. The action is a civil action for damages arising out of injuries sustained in a fall at Forrest Gallery shopping center in Tullahoma, Tennessee, and the United States District Court

for the Eastern District of Tennessee, Western Division at Winchester, has jurisdiction by reason of the diversity citizenship of the parties.

3. The matter in dispute exceeds \$75,000, exclusive of interests and costs, as evidenced by Plaintiff's Complaint.

4. At the time of the commencement of this action in state court, and since that time, the Plaintiff is a citizen and resident of Coffee County, Tennessee.

5. Defendant Wheeler is a corporation organized under the laws of Maryland, with its principal place of business in Virginia, and is considered a citizen of both Maryland and Virginia.

6. Defendant Forrest Gallery is a limited liability company. The citizenship of a limited liability company for purposes of diversity jurisdiction is the citizenship of its members. *Delay v. Rosenthal Collins Group, Inc.*, 585 F.3d 1003 (6th Cir. 2009). No members of Forrest Gallery are citizens of the State of Tennessee; therefore, Forrest Gallery is not a citizen of the State of Tennessee.

7. Plaintiff is a citizen of the State of Tennessee. Defendants Wheeler and Forrest Gallery are not citizens of the State of Tennessee. Therefore, this suit is between citizens of different states as required by 28 U.S.C. § 1332(a).

8. A copy of all pleadings and Orders served upon Defendants are filed with this Notice and attached hereto as Exhibit A.

9. Defendants will give written notice of the filing of this Notice as required by 28 U.S.C. § 1446(d).

10. A copy of this Notice will be filed with the Clerk of the Circuit Court of Coffee County, Tennessee as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendants request that this action proceed in this Court as an action properly removed to it.

Dated this the 26th day of February, 2018.

Respectfully submitted,

CARR ALLISON

By: /s/ Erin E. Gomez
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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2018, I electronically filed this **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Eric J. Burch, Esq.
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CARR ALLISON

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